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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 21 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Implementation of Sections 3(n) )  
and 332 of the Communications Act ) GN Docket No. 93-252  
 )  
Regulatory Treatment of Mobile )  
Services )

To: The Commission

COMMENTS OF SMARTLINK DEVELOPMENT LIMITED PARTNERSHIP

SmartLink Development Limited Partnership  
("SmartLink"), pursuant to Section 1.415 of the Commission's  
Rules, hereby respectfully comments on the Further Notice of  
Proposed Rulemaking released May 20, 1994 ("FNPRM") in the above-  
captioned proceeding. By that FNPRM the Commission has proposed  
further modifications to its existing mobile services rules to  
complete the transition to the new regulatory regime for such  
services established by the Second Report and Order in this  
proceeding.<sup>1</sup>

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<sup>1</sup>Second Report and Order, Implementation of Sections 3(n) and  
332 of the Communications Act, Regulatory Treatment of Mobile  
Services, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994), erratum,  
Mimeo No. 92486 (released March 30, 1994) ("Second Report and  
Order").

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## I. STATEMENT OF INTEREST

SmartLink is a Connecticut limited partnership headquartered in Wallingford, Connecticut that is engaged in the research and development, manufacturing and marketing of a unique line of radio products designed to provide state-of-the-art networking features to a wide variety of land mobile radio services. The SmartLink™ line of radio products allows multiple trunking and conventional system protocols to be joined in a flexible dispatch and interconnect network configuration. The SmartLink system thus will facilitate the interoperability of different radio products employing different protocols, for example, in the 800 MHz band. The SmartLink system is, moreover, frequency independent, and will enable 220, 450, 800, and 900 MHz conventional and trunked systems to be networked into an integrated system. Thus, for example, the system allows 220, 450, 800, and 900 MHz mobile units to communicate with one another.

## II. COMMENTS

In its FNPRM (at paras. 10-17), the Commission requests comments on whether the 220 MHz radio services are "substantially similar" to common carrier mobile services to warrant application of comparable technical requirements pursuant to the provisions of Title VI of the Omnibus Budget Reconciliation Act of 1993. In SmartLink's view, any assessment of whether the 220 MHz services are "substantially similar" to common carrier mobile services, like cellular radiotelephony, must consider, at a minimum, the

maturity of the products offered and markets served by the 220 MHz licensees when compared to common carrier mobile services and the system capacity available to 220 MHz licensees compared to that available to cellular and other CMRS licensees (including PCS licensees).

In this respect, SmartLink believes that the FCC should not now reach any determination that the 220 MHz services are "substantially similar" to other CMRS services. As evidenced by the business cycle of many communications services and products, including 800 MHz SMR, specialized common carrier services and others, as new services emerge and evolve and their products and markets mature, the regulations under which they operate must also change. To this end, SmartLink questions whether the development of ESMR would have been possible if the stand-alone 800 MHz SMR systems employing focused marketing to accommodate the specialized communications needs of individual customers had been subject to regulation as common carriers, like their cellular counterparts.

SmartLink thus concurs with the Commission (FNPFM at para. 17) that, given the relatively recent licensing of the 220 MHz band, and the fact that most systems are not yet constructed, it is unlikely that 220 MHz licensees will offer services that are similar to, or competitive with, cellular or other broadband services for the foreseeable future. The newness of the 220 MHz service in relation to services such as cellular, 800 MHz SMR and ESMR suggests that the Commission should, for now, decline to

apply comparable common carrier technical and operational rules to 220 MHz licensees.

SmartLink further agrees that with a total allocation of only two megahertz of spectrum, it is unlikely that 220 MHz licensees will soon be able to offer cellular-like, ESMR-like or broadband PCS-like services which generally operate or will operate with between ten and thirty megahertz of spectrum per licensee. The limited bandwidth associated with 220 MHz systems simply cannot match the capacity of the above-mentioned services. Thus, for example, the amount of interconnected voice traffic capable of being transmitted over a 220 MHz system is significantly less than that of a cellular system or typical ESMR system. For this reason, 220 MHz service should not be viewed as "substantially similar" to broadband communications services like ESMR, cellular and 2 GHz PCS.

Much more construction and operational data concerning 220 MHz systems, and the markets they serve, will be available in two to three years. For this reason, SmartLink suggests that the Commission review the issue of similarity between 220 MHz services and broadband or narrowband CMRS services at that time.

The FNPRM further seeks comment on 220 MHz channel assignments and service areas. (FNPRM, at para. 38). In particular, assuming that it finds 220 MHz service to be substantially similar to CMRS services, the Commission asks whether the current 5 kHz paired channel assignments (commercial nationwide: four five-channel blocks; commercial/non-commercial

local: 20 five-channel blocks; local: 30 channels individually or in groups) should be revised to coincide with the channel assignment and service area rules applicable to competing CMRS services. Id.

In this regard, the Commission has incorporated as part of the FNPRM the Petition for Declaratory Ruling filed by SunCom Mobile & Data, Inc. ("SunCom") seeking permission to aggregate multiple non-nationwide 5-channel licenses on a regional basis under common ownership.<sup>2</sup> Specifically, SunCom requests a waiver of rule §90.739, 47 C.F.R. §90.739, which prohibits a 220 MHz licensee from having more than one station authorization within a 40 mile radius unless the licensee demonstrates that its communications requirements require the additional system(s).<sup>3</sup>

While SmartLink believes that regional 220 MHz systems along the lines of those proposed by SunCom may eventually prove to be desirable, any such regionalization or aggregation of 220 MHz systems must be closely scrutinized on a case-by-case basis by the Commission and must be subject to stringent financial and construction requirements to ensure that 220 MHz service as a whole does not suffer from the wholesale warehousing of licenses in anticipation of future consolidation. Indeed, given the

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<sup>2</sup>Request for Declaratory Ruling and Request for Rule Waiver, dated February 1, 1994 ("Waiver Request").

<sup>3</sup>SunCom states in its waiver request that it intends to implement a commercial, trunked narrowband 220 MHz system consisting of an average of 50 channels (ten 5-channel blocks) per market in 77 or more of the largest 100 urban areas, over a period of eight years.

differences between the stage of the business and market cycle for 220 MHz services, as opposed to that of the 800 MHz SMR markets at the time ESMR waivers were initially requested, SmartLink believes that the ESMR precedent is wholly inapplicable to SunCom's request.

First, SunCom's Waiver Request comes at a time when most of the licensed, local 220 MHz systems have not yet been constructed and placed in operation. Thus, as explained above, it is too early to assess whether such systems are likely to compete with other CMRS providers, let alone how successful they will be. SmartLink therefore disagrees with SunCom's conclusion that "five-channel trunked 220 licenses . . . are simply not in themselves commercially viable." (Waiver Request at para. 12.) They should be given the opportunity to develop their own market presence and become viable. For the markets to respond sufficiently to ensure a "critical mass" of both 220 MHz equipment suppliers and end users, however, the early construction and deployment of the now-licensed 220 MHz systems is crucial. The introduction of this important spectrally-efficient technology has already been delayed too long.

Second, a grant of SunCom's request "as-is" would amount to a fundamental rewrite of the Commission's 220 MHz rules which created procedures for applying for nationwide channels and for requesting additional channels in local markets. Authorization of the Waiver Request would permit SunCom to construct what is effectively a nationwide system without having

to comply with the entry criteria (including financial showings) set forth in §90.713 of the rules.

Moreover, the rules already provide a procedure for acquiring additional systems in a market. Section 90.739 provides that additional channels will be authorized if the applicant can justify its need on the basis of its communications requirements. This could be accomplished, for example, by a showing of customer demand or the innovation of a new product that would require the additional system capacity. SmartLink submits that SunCom should be required to provide such a justification.<sup>4</sup>

SmartLink further submits that nothing in SunCom's Waiver Request suggests that their proposed aggregation could not be implemented in the future. In other words, SunCom's proposal could be easily implemented after the 220 MHz market is allowed to develop beyond its current nascent state without the added market complications which a grant of SunCom's Waiver Request would create. SunCom could simply aggregate the channels it desires after the channels are constructed. At that time, the showing contemplated by Section 90.739 presumably could define the product and service offerings, as well as the geographic markets, contemplated by the consolidated licensee.

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<sup>4</sup>SmartLink further notes that the Commission has indicated that applicants seeking justifications for additional channels prior to the construction of a first system in an area "will face a heavy burden of proof." Report and Order, PR Docket No. 89-552, 6 FCC Rcd 2356 (1991), at para. 59.

Finally, in the event that the Commission grants SunCom's Waiver Request (or the waiver requests of others for similar relief), rigorous construction requirements should be imposed in order to prevent further delay in the development of the 220 MHz industry. To this end, SmartLink believes that SunCom's proposed construction schedule, which would require construction in only 15 percent of its 77 markets within two years, is overly lenient under the circumstances. SmartLink thus suggests that the Commission require wide-area 220 MHz licensees to construct at least two of every five channels in each five-channel block (amounting to 40% of the aggregate system) by the initial construction deadline. This would ensure that full five-channel frequency blocks would not be warehoused and withheld from service to the public.

### III. CONCLUSION

Given the relatively recent licensing of the 220 MHz band, and the fact that most systems are not yet constructed, it is too early to be able to assess whether commercial 220 MHz licensees will provide service that is "substantially similar" to any Part 22 service. SmartLink, indeed, firmly believes that the 220 MHz service will be successfully launched independent of the presence at this time of system aggregators, provided that the service is able to reach a critical mass of end users. For this reason, SmartLink urges the FCC at a minimum to impose strict financial and construction requirements upon SunCom or others who may seek similar relief to ensure that system



"consolidation" does not amount to system warehousing in the 220 MHz band.

Respectfully submitted,

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